

Small Business Administration

§ 107.885

(1) The management of the Small Business owns at least a 25 percent interest in the voting securities of the business; and

(2) The management of the Small Business can elect at least 40 percent of the board members of a corporation, general partners of a limited partnership, or managers of a limited liability company, as appropriate, and the Investor Group can elect no more than 40 percent. The balance of such officials may be elected through mutual agreement by management and the Investor Group.

(d) *Temporary Control permitted.* You may acquire temporary Control:

(1) Where reasonably necessary for the protection of your existing investment;

(2) If there has been a material breach of the Financing agreement by the Small Business;

(3) If there has been a substantial change in the Small Business's operations or products during the past 2 years, or such a change is the intended result of the Financing, and the Investor Group's Financing constitutes the Small Business's major source of capital; or

(4) In the case of a Start-up Financing, if you or the Investor Group constitute the Small Business's major source of capital.

(e) *Control certification.* If you take temporary Control of a Small Business under paragraph (d) of this section, you must file a Control certification with SBA within 30 days. The certification must state:

(1) The date on which you took Control;

(2) The basis for taking Control; and

(3) Your agreement to relinquish Control within five years (although you may, under extraordinary circumstances, request SBA's approval of an extension beyond five years).

(f) *Control acquired through enforcement actions.* If you retain or acquire Control through enforcement action, you must notify SBA immediately and submit a Control certification within 30 days.

(g) *Additional Financing for businesses under Licensee's Control.* If you assume Control of a Small Business, you may later provide additional Financing,

without an exemption under § 107.730(a)(1).

[61 FR 3189, Jan. 31, 1996, as amended at 63 FR 5867, Feb. 5, 1998]

§ 107.880 Assets acquired in liquidation of Portfolio securities.

You may acquire assets in full or partial liquidation of a Small Business's obligation to you under the conditions permitted by this § 107.880. The assets may be acquired from the Small Business, a guarantor of its obligation, or another party.

(a) *Timely disposition of assets.* You must dispose of assets acquired in liquidation of a Portfolio security within a reasonable period of time.

(b) *Permitted expenditures to preserve assets.* (1) You may incur reasonably necessary expenditures to maintain and preserve assets acquired.

(2) You may incur reasonably necessary expenditures for improvements to render such assets saleable.

(3) You may make payments of mortgage principal and interest (including amounts in arrears when you acquired the asset), pay taxes when due, and pay for necessary insurance coverage.

(c) *SBA approval of expenditures.* This paragraph (c) applies if you have outstanding Leverage or are applying for Leverage. Any application for SBA approval under this paragraph must specify all expenses estimated to be necessary pending disposal of the assets. Without SBA's prior written approval:

(1) Your total expenditures under paragraphs (b)(1) and (b)(2) of this section plus your total Financing(s) to the Small Business must not exceed your overline limit under § 107.740; and

(2) Your total expenditures under paragraph (b) of this section plus your total Financing(s) to the Small Business must not exceed 35 percent of your Regulatory Capital.

LIMITATIONS ON DISPOSITION OF ASSETS

§ 107.885 Disposition of assets to Licensee's Associates or to competitors of Portfolio Concern.

(a) *Sale of assets to Associate.* Except with SBA's prior written approval, you are not permitted to dispose of assets

(including assets acquired in liquidation) to any Associate if you have outstanding Leverage or Earmarked Assets. As a prerequisite to such approval, you must demonstrate that the proposed terms of disposal are at least as favorable to you as the terms obtainable elsewhere.

(b) *Sale of assets to competitor of Small Business.* Except with the prior written approval of the Portfolio Concern (if it is not under your Control) or of SBA, you are not permitted to dispose of Portfolio securities to a competitor of such concern. If SBA's prior approval is not required, you must promptly notify SBA of any such disposal.

MANAGEMENT SERVICES AND FEES

§ 107.900 Management fees for services provided to a Small Business by Licensee or its Associate.

This § 107.900 applies to management services that you or your Associate provide to a Small Business during the term of a Financing or prior to Financing. It does not apply to management services that you or your Associate provide to a Small Business that you do not finance. Fees permitted under this section are not included in the Cost of Money (see § 107.855).

(a) *Permitted management fees.* You or your Associate may provide management services to a Small Business financed by you if:

(1) You or your Associate have entered into a written contract with the Small Business;

(2) The fees charged are for services actually performed;

(3) Services are provided on an hourly fee, project fee, or other reasonable basis; and

(4) You can demonstrate to SBA, upon request, that the rate does not exceed the prevailing rate charged for comparable services by other organizations in the geographic area of the Small Business.

(b) *Fees for service as a board member.* You or your Associate may receive fees in the form of cash, warrants, or other payments, for services provided as members of the board of directors of a Small Businesses Financed by you. The fees must not exceed those paid to other outside board members. In the absence of such board members, fees

must be reasonable when compared with amounts paid to outside directors of similar companies.

(c) *SBA approval required.* You must obtain SBA's prior written approval of any management contract that does not satisfy paragraphs (a) or (b) of this section.

(d) *Recordkeeping requirements.* You must keep a record of hours spent and amounts charged to the Small Business, including expenses charged.

(e) *Transaction fees.* (1) You may charge reasonable transaction fees for work you or your Associate perform to prepare a client for a public offering, private offering, or sale of all or part of the business, and for assisting with the transaction. Compensation may be in the form of cash, notes, stock, and/or options.

(2) Your Associate may charge market rate investment banking fees to a Small Business on that portion of a Financing that you do not provide.

Subpart H—Non-leveraged Licensees—Exceptions to Regulations

§ 107.1000 Licensees without Leverage—exceptions to the regulations.

The regulatory exceptions in this section apply to Licensees with no outstanding Leverage or Earmarked Assets.

(a) You are exempt from the following provisions (but you must come into compliance with them to become eligible for Leverage):

(1) The overline limitation in § 107.740.

(2) The restrictions in § 107.530 on investments of idle funds, provided you do not engage in activities not contemplated by the Act.

(3) The restrictions in § 107.550 on third-party debt.

(4) The restrictions in § 107.880 on expenses incurred to maintain or improve assets acquired in liquidation of Portfolio securities.

(5) The recordkeeping requirements and fee limitations in § 107.825 (b) and (c), respectively, for securities purchased through or from an underwriter.

(b) You are exempt from the requirements to obtain SBA's prior approval for: